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April 5, 1999

Donald V. Hammond  
Fiscal Assistant Secretary  
Department of the Treasury  
1500 Pennsylvania Ave., Room 2112  
Washington, D.C. 20220

RE: Comment on Advance Notice of Proposed Rulemaking  
Re: Electronic Transfer Accounts

Dear Mr. Hammond:

Community Legal Services, Inc. is a nonprofit legal aid organization that represents low-income consumers in Philadelphia at no charge. We represent thousands of individuals who receive SSI, Social Security and other federal benefits. In addition, I represent the Action Alliance for Senior Citizens, an advocacy group that advances the interests of low-income senior citizens. This comment is being offered both on behalf of our individual clients and on behalf of Action Alliance.

Preliminarily, I want to make clear that I support entirely the comments submitted by the National Consumer Law Center. The purpose of this separate comment is to supplement that more extensive discussion with the results of my own personal investigation regarding the terms and conditions of the two electronic accounts being offered by financial institutions through check cashing stores located within a block of this office in North Philadelphia. Hopefully, through this window into the current realities of electronic accounts, you will be able see the absolute urgency of prohibiting the kind of arrangements that are emerging between banks and check-cashing establishments.

What I discovered were programs meeting the description of each of the first two generic arrangements mentioned in the ANPRM. In the first case, an out-of-state bank receives the deposit which is converted into a cashier's check at a particular check-cashing outlet. While the arrangement and the fees charged are relatively well disclosed, it appears to provide no useful service to the benefit recipient. In the second case, a local, major bank has created a second-class, extremely expensive account that seems designed principally to make large profits from federal benefits recipients while keeping these individuals away from the banks' branches. In the latter case, I will provide a step-by-step description of the difficulty I encountered in attempting to obtain the applicable rules and fees of this account.

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1. The Sham "Account" Offered by River City Bank Provides Consumers with an Additional Monthly Cost in Return for No New Services.

Two of the three check cashing stores I visited offered direct deposit services through the "Dollars\$\$\$ Direct" program of River City Bank. This program is consistent with the first of the three arrangements between financial institutions and payment service providers described in the ANPRM. The federal payment is deposited into a River City account and is converted into a cashier's check at the check cashing store, which then must be cashed in full. The consumer has no means of accessing the payment any other way or at any other location. Once the payment is turned entirely to cash, the consumer is obviously a captive customer for the store's money order services. (Her only available alternative would be to stand on line for her paper check and then to take it elsewhere for cashing.)

The terms and conditions of this arrangement are contained in a River City application form which I am attaching as Exhibit A. The operative language is in the second paragraph of the application:

The Bank is hereby authorized to establish a special use direct deposit account in my name ("Direct Deposit Account") at the Bank to receive my federal payments from the agency/agencies or my non-government payments from the Payor listed above as those payments are disbursed by the Government or Payor. **I further authorize the Bank to access the Direct Deposit Account once the direct deposits have been made into the Direct Deposit Account and to disburse the monies deposited therein (less applicable fees and charges) as a cashier's check made payable to me.** I acknowledge that the Direct Deposit Account is being established pursuant hereto for the sole purpose of facilitating the electronic transfer of my Government payments and the disbursement thereof. **I understand and agree that I am not permitted to make any other type of deposits or withdrawals from the Direct Deposit Account at any time.** I understand and agree that **the Bank will charge an Initial Service Charge, Monthly Maintenance Fee, Cashier's Check Fee** (collectively, the "Direct Account Charges") for the establishment of the Direct Deposit Account and I hereby expressly authorize the Bank to deduct such Direct Account Charges from the proceeds of the Direct Deposit. **I acknowledge that my Electronic Funds Distributor (the "EFD"), identified below, is authorized to act . . . as my exclusive agent . . .** (emphasis added).

River City's fee schedule appears on the back of the application. There is an enrollment fee of \$14.50 (ambiguously "waived for a limited time." apparently, since April 1997) and two monthly

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charges, a "maintenance fee" of \$1.00 and a "cashier's check fee" of \$1.95. This combined charge of \$2.95 does not include any fee charged by the outlet for cashing the River City check and for the money orders the consumer then purchases.

As observed in ANPRM, this arrangement is not an "account" at all, having virtually none of the attributes of a bank account. Most importantly, there is no ability to make incremental withdrawals. Amazingly, the only "service" the consumer obtains in return for the fees charged is the conversion of her electronic payment into a paper check, thus reversing the whole purpose of the EFT mandate. While before the consumer would receive a paper check in the mail and carry that check to the check cashing outlet for the purpose of turning it into cash, she now must go to that location to pick up the check, less the new \$2.95 fee, at the outlet. Other than the net check being smaller, the only other change for the consumer is that she is more captive to the particular check cashing outlet (her "exclusive agent") than she was before. This result, of a Social Security recipient being required to pick up her check in a check-cashing establishment, is precisely the kind of system that the Commonwealth of Pennsylvania just abandoned for distributing welfare checks, in favor of an ATM-based electronic system. It would certainly be a strange consequence of federal EFT policy to go back to the welfare model for Social Security recipients.

2. The "Direct Deposit Service Account" Offered by PNC Bank through a Check-Cashing Chain Imposes Unreasonable Monthly Fees and Provides Consumers with Substantially Less Rights and Protections than Other PNC Customers.

The three-street intersection of Broad Street, Germantown Avenue and Erie Avenue is one of the principal commercial centers of North Philadelphia. There is a branch of Mellon Bank at the intersection. Up until three years ago there also was a branch of PNC Bank located two blocks south on Broad Street at Temple University Hospital. When that branch closed, it was replaced by an ATM kiosk owned and operated by PNC at the corner of Broad Street and Tioga Street. In addition to these two financial institution facilities, our neighborhood is home to numerous check-cashing outlets and pawnshops. Among these is a branch of a Philadelphia chain called Currency One, a/k/a West Side Check Cashing and Pawnshops. During the week of March 29, 1999 I paid several visits to that storefront.

The interior of West Side Cashing consists of a large empty room with posters on the wall. At the back of that room are two glassed-in cashier windows. Among the posters on display is a red-white-and-blue poster with an eagle that appears similar to the U.S. Postal Service insignia; it announces that "Direct Deposit Is Here." I asked at the window for information about the direct deposit service. I was told that it cost \$2.50 per month, \$1 per withdrawal and an additional \$10.95 per month for an ATM card, unless you wanted a "gold"

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MAC card which is \$20.95 per month. I asked for documentation and was handed a 19-page Consumer Information brochure of PNC Bank, entitled "Account Agreement & Disclosures for Direct Deposit Service Accounts." (I have attached the brochure as Exhibit B.) I asked for a fee schedule and was told that everything I needed to know was contained in the PNC brochure. I left and went back to my office to study the Account Agreement brochure.

The Account Agreement is 19 pages of legal disclosures prepared, presumably, by the lawyers of PNC. Nowhere in these 19 pages is there a fee schedule. The subject of fees comes up at page 9. The consumer is advised that she agrees to pay "any monthly service fees or other charges or fees that may be imposed" and is invited to request a Schedule of Service Charges and Fees at any PNC branch. Two paragraphs later the Agreement states as follows:

Except as otherwise stated, all charges and other fees mentioned in the Agreement or otherwise applicable to your Account are detailed in the Currency One Fee Schedule, a copy of which has been provided to you which is a part of this Agreement. We reserve the right to make changes to our fees and other charges at any time and from time to time.

Having received no Currency One Fee Schedule at the check-cashing window, I called a Currency One store in a different neighborhood for the missing fee schedule. The next day I got in the mail a photocopy of a one-page marketing flyer, attached as Exhibit C. The paper has Ben Franklin and the name "Currency Direct" on the top of the page. There is no mention of either Currency One or PNC in the flyer. It is titled, "Don't Cash Your Check. Go Direct . . . With Currency Direct." The last of four paragraphs about the benefits of enrolling in a direct deposit program consists of a description of the fees charged. This is, apparently, the only "fee schedule" that exists, assuming that at branches other than the one in our neighborhood it is, in fact distributed:

**What does it cost for all this?**

You pay **\$10.95** a month for YOUR OWN MAC CARD. Additional fees are an ACH fee of \$2.50 (usually charged each month for each deposit), a POS\*\* charge of \$1.00, a \$2.00 charge per ATM usage, and a lost card replacement fee of \$10.00. You pay applicable fees based on your use, as listed in your account agreement and at the ATM.

\*\*A POS charge is incurred when you use your card to make purchases. (emphasis in the original)

Thus, every month you pay \$10.95 for access to "MAC" (the local ATM network) and, also, \$2.50 per deposit, meaning that you pay \$5/month in addition to the monthly MAC fee if you receive both an SSI and Social Security payment. (Note that there is no

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reference to the more expensive "gold" MAC mentioned by the check-cashing employee.) Second, there is a transaction fee imposed for each MAC transaction, \$1 for POS and \$2 at an ATM. This does not include any surcharge imposed by the owner of the ATM.

Among the still remaining questions: 1) Could the customer avoid surcharges by using an ATM owned by PNC, such as the one two blocks away? and 2) What are the additional services obtained by choosing the gold MAC card? To answer the first question I tried the Customer Service number for PNC. However, neither the customer service representative I reached, nor her supervisor, had ever heard of Currency One, or of a PNC "direct deposit service account." Amazingly, the representative expressed surprise when I described the arrangement between PNC and Currency One and asked me to fax her a copy of the PNC brochure. From the absence of any disclosure designating special treatment for using PNC-owned ATM, the reference in the Account Agreement to PNC's general right to charge any fees it chooses to impose and its treatment of the check-cashing outlet as the only location where the consumer can make a teller withdrawal, I surmised that the consumer might be charged both a \$2 withdrawal charge and a surcharge when using an ATM owned by PNC. This hunch was confirmed when the supervisor called me back to inform me that she found someone who knows about the PNC-Currency One arrangement and that, indeed, the customer is charged ATM surcharges — even at PNC machines — if she makes a withdrawal anywhere other than a branch of Currency One. PNC's surcharge is currently \$1.00 **Thus, when making a withdrawal at a PNC machine, the consumer is charged a total of \$3.00 in fees for each withdrawal.** Keep in mind that this outcome is disclosed nowhere and that the customer would actually have reason to believe that PNC is her home bank given that, after all, the only documentation provided by Currency One is a PNC Account Agreement brochure.

Regarding the workings of the Gold MAC, I called back Currency One and was told that the extra charge would entitle the consumer to get cash advances on the following month's deposit. He also told me the loan would be "interest free." Assuming he accurately described this product — and, again, I have yet to see any written disclosures — **this is essentially a "payday" loan product** which, instead of charging interest, charges a constant \$10/month fee whether you borrow anything or not. In response to my request for any written material regarding the gold card, I was referred to the application that the customer signs when signing up for the program.

Back I went to the check-cashing store, this time requesting the application, which is attached as Exhibit D. There are a number of striking features of this "Direct Deposit Service Enrollment." First, neither PNC nor Currency One is identified on the face of the

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form. Second, the only reference to either entity is contained in a small-print box that requests the customer to agree "that all mail from PNC Bank regarding my account shall be sent to Currency One." (Note that if the customer checks off "No", the next line informs her that she needs to go somewhere else to open an account.) In other words, **as a condition of enrolling, the customer is required to waive her right to get monthly statements**, presumably, the only means of seeing what fees are in fact being imposed. Finally, although there are boxes at the top of the form which allow for a choice between three different withdrawal products (Cash Disbursement, Currency Express Card and Gold Currency Express Card), there is no written description on either the front or back of the form of the three products or of the fees associated with them.

By the way, PNC Customer Service also provided me with the fees for two economy accounts available to their regular, low-income, direct deposit customers. "Budget Checking" allows 3 teller transactions and 10 ATM or check transactions for a \$5/month fee. For the same fee, "Express Checking" offers unlimited ATM withdrawals without checking. So while PNC offers its own customers the convenience of direct deposit and ATM access for as little as \$5/month, those utilizing PNC's arrangement with Currency One could pay monthly fees as high as \$20-40 per month.<sup>1</sup>

In summary, the PNC-Currency One arrangement, while providing consumers with access to their money on a continuing basis, imposes outrageously high fees and unreasonably impairs consumer protections, including the absence of adequate disclosure and the required waiver of monthly statements. Clearly, it would be an irrational economic choice to sign up for this account, as opposed to one of PNC's other account products. The only way a person would do so would be through deceptive and misleading marketing. Allowing financial institutions to cash in on EFT-99 and to exploit the poor as is happening in Philadelphia would be unconscionable and would make a travesty of the Congressional mandate.

Sincerely,

Irv Ackelsberg

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<sup>1</sup>For example, assuming the use of the standard MAC card, only one benefit check being deposited, and five ATM withdrawals, PNC would collect fees of \$28.45 (\$10.95 + 2.50 + 15.00. Getting a second deposit (i.e., both SSI and Social Security) plus the "gold" MAC card would add \$12.50, for a total of \$40.95.

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